Supreme Court, U.S.
FILED
OCT 17 1979
MICHAEL RODAK, JR., CLERK

No. 79-212

In the Supreme Court of the United States

OCTOBER TERM, 1979

MILDRED FRANCIS-SOBEL, PETITIONER

v.

UNIVERSITY OF MAINE, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

BRIEF FOR THE FEDERAL RESPONDENT IN OPPOSITION

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OPINION BELOW

The opinion of the court of appeals (Pet. App. 35-39) is reported at 597 F. 2d 15. The district court did not issue an opinion.

JURISDICTION

The judgment of the court of appeals was entered on May 3, 1979. Petitioner sought and obtained an extension until June 4, 1979, in which to file a petition for rehearing in the court of appeals.

On June 1, 1979, petitioner moved the court of appeals for permission to file a petition for rehearing in excess of ten pages. See Fed. R. App. P. 41(b). This motion was denied. Petitioner then attempted to file a 68-page

petition for rehearing in the court of appeals, but it was returned to petitioner for failure to eomply with the ten page limit of Rule 41(b).

The petition for a writ of certiorari was filed on August 9, 1979, 98 days after the judgment was entered in the court of appeals. Because there was no timely filed petition for rehearing in the court of appeals, the petition for a writ of certiorari is out of time under 28 U.S.C. 2101(c). It therefore "must * * * be denied for want of jurisdiction." *Department of Banking* v. *Pink*, 317 U.S. 264, 268 (1942).

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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DOJ-1979-10